In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1066

RENATO RIVA, PETITIONER

v.

RICHARD G. KLEINDIENST, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner, a citizen of Peru, was denied admission to the United States on the ground that he "departed from * * * the United States to avoid or evade training or service in the armed forces in * * * a period declared by the President to be a national emergency" (8 U.S.C. 1182(a)(22)). His appeal from the decision of the Special Inquiry Officer of the Immigration and Naturalization Service (Pet. App. A20-A28) was dismissed by the Board of Immigration Appeals (Pet. App. A13-A19), and he thereafter sought review in the United States District Court for the District of New Jersey. The district court granted the government's motion for summary judgment (see Pet. App. A9-A11), and the court of appeals affirmed (Pet. App. A1-A7).

Petitioner's contention—that the statutory exclusion was not meant to apply to one whose means of avoiding military service is to leave the country only long enough to change his immigration status—was thoroughly considered and properly rejected by the court below, upon whose opinion we primarily rely. As the court held (Pet. App. A5), the issue under the statute is whether petitioner's purpose at the time he left the United States was to avoid military service. Both the Special Inquiry Officer and the Board of Immigration Appeals expressly found that the principal purpose of petitioner's departure was to avoid induction,[1] and the court of appeals correctly determined that those findings were supported by substantial evidence (Pet. App. A5).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1973.

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[1] The Special Inquiry Officer stated (Pet. App. A27):

> [T]he motivating factor for [petitioner's] leaving the United States * * * was [his] * * * desire to avoid military service. the tool was the obtaining of nonimmigrant status. the only way the applicant could avoid military service * * *.

The Board of Immigration Appeals stated (Pet. App. A17):

> Applicant had been ordered to report for induction—he left the country to avoid the order: avoidance of induction was the primary purpose of his departure. * * * His status became fixed at the moment of his departure for purposes of [the statute] * * *.